



# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 517

## IN THE MATTER OF KATHERINE DOUGHTY

### DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Katherine Doughty ("Doughty") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Doughty had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on January 18, 1995, voted to find reasonable cause to believe that Doughty violated G.L. c. 268A.

The Commission and Doughty now agree to the following facts and conclusions of law:

1. Doughty served as Insurance Commissioner from July 1991 until June 1993. The Insurance Commissioner is appointed by the Governor.

2. The Insurance Commissioner has overall responsibility and authority concerning regulation, recommendations and enforcement of all applicable statutes pertaining to entities engaged in insurance or insurance-related enterprises.<sup>1/</sup> The Insurance Commissioner is the appointing authority for the Division of Insurance, the agency responsible for regulating every facet of insurance business transacted within the Commonwealth of Massachusetts.

The Division of Insurance is contained within the Consumer Affairs Secretariat. This Secretariat has as its primary function the protection of the consumer and the regulation of certain industries doing business within the Commonwealth. The objective of the Secretariat is to strike a fair balance between consumer protection and the fostering of a beneficial business climate.

3. As the Insurance Commissioner, Doughty regularly participated in meetings with insurance company lobbyists and other representatives and employees of insurance companies having an interest in matters before the Division of Insurance ("interested parties").<sup>2/</sup>

4. In addition to meetings held at the Division of Insurance office, Doughty regularly met with interested parties outside of the office at restaurants and at entertainment events ("entertainment activities"). Such entertainment activities included meals at restaurants such as the Parker House, The Bay Tower Room, The Four Seasons and Biba. In addition, Doughty attended with interested parties performances of The Phantom of the Opera, Les Miserables, a Boston Red Sox game and a concert at Tanglewood.

5. Doughty attended entertainment activities with interested parties, on average, approximately three times a week.<sup>3/</sup> The interested parties routinely paid for Doughty's expenses.<sup>4/</sup>

6. According to Doughty, who relocated to Massachusetts from Texas in order to take the position of

Insurance Commissioner, the entertainment activities listed above had both a social and business purpose.

7. At all relevant times, Doughty knew that the interested parties paying her expenses had interests in matters before the Division of Insurance.

8. Doughty did not disclose in writing to her appointing authority that interested parties were paying, on a regular basis, for her expenses associated with the entertainment activities.

9. General Laws, c. 268A, §23(b)(3) prohibits a public employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person having knowledge of the relevant circumstances to conclude that anyone can improperly influence or unduly enjoy her favor in the performance of her official duties. The subsection further provides that it shall be unreasonable to so conclude if the public employee has disclosed in writing to her appointing authority the facts which would otherwise lead to such a conclusion.

10. By engaging in a practice of accepting benefits in meals and entertainment on a regular basis from individuals who had an interest in matters before the Division of Insurance, all while Doughty was in a position to take official action which could benefit the givers, and without notifying her appointing authority, Doughty acted in a manner which would cause a reasonable person knowing all of the facts to conclude that the interested parties can improperly influence her in the performance of her official duties.<sup>5/</sup> In so doing, she violated §23(b)(3).<sup>6/</sup> In other words, where interested parties who have business pending before the Division of Insurance invite the Insurance Commissioner to attend entertainment events with them on a regular basis and where the interested parties pay for the Insurance Commissioner to attend such events, a reasonable person would conclude that such interested parties can unduly enjoy the Insurance Commissioner's favor in the performance of her official duties when matters concerning the interested parties come before the Division of Insurance. Therefore, a written public disclosure of these facts to Doughty's appointing authority pursuant to §23(b)(3) was required.<sup>7/</sup>

11a Doughty cooperated with the Commission's investigation.

12a In view of the foregoing violations of G.L. c. 268A by Doughty, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Doughty:

(1) that Doughty pay to the Commission the sum of two thousand dollars (\$2,000.00) as a civil penalty for her course of conduct in violation of G.L. c. 268A, §23(b)(3) by attending entertainment activities as the guest of interested parties under the circumstances described above, without disclosing in writing such activity to her appointing authority; and

(2) that Doughty waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 9, 1995

<sup>1/</sup> Legal authority for these actions is contained in G.L. c. 175, and in other statutes and regulations.

<sup>2/</sup> The interested parties were from a variety of sources who may or may not have had common interests depending upon the specific matter before the Division of Insurance.

<sup>3/</sup> The exact frequency that Doughty attended entertainment activities as interested parties' guest is unclear due to lack of recordkeeping and the number of sources.

<sup>4/</sup> Virtually all of Doughty's expenses for each of the above occasions were less than fifty dollars.

<sup>5/</sup> Section 23(b)(3) allows a public official to dispel the appearance of improper influence or undue favor by making a written disclosure to her appointing authority. Doughty, however, failed to make such a disclosure. See *EC-COI-92-12* (public employee should disclose relationship if ties to person under regulatory jurisdiction creates a reasonable basis that the regulatee could enjoy preferential treatment from the public official); *EC-COI-92-7* (public employees should disclose private business relationships with those under their jurisdiction); *EC-COI-89-16* (public official should publicly disclose to appointing authority relevant facts surrounding relationship

with regulatee in order to dispel any possible appearance of undue favoritism).

<sup>6/</sup> The above conduct also raises concerns under G.L. c 268A, §3(b). Section 3(b) prohibits a state employee from, directly or indirectly, receiving anything of substantial value for or because of any official act performed or to be performed. The Commission has ruled that anything worth \$50 or more is of substantial value for §3 purposes. See *EC-COI-93-14; Commonwealth v. Famigletti*, 4 Mass. App. 584, 587 (1976). In addition, the Commission stated in *In re United States Trust Co.*, 1988 SEC 356, that for §3 purposes, gifts of less than \$50 will be aggregated under certain circumstances. Here, however, the Commission has chosen to resolve this matter under §23(b)(3) in order to emphasize that a public official's practice of regularly accepting gratuities of less than \$50 in value from individuals who are subject to that official's regulatory authority violates §23(b)(3), even if such individuals have no common interest in any pending matter before that official.

The above conduct also raises concerns under G.L. c 268A, §23(b)(2). Section 23(b)(2) prohibits a public employee from using or attempting to use her official position to secure for herself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals. Although the Commission has decided not to resolve the matter under §23(b)(2), it may do so if faced with similar facts in the future.

<sup>7/</sup> As the Commission stated in *Advisory #8* in addressing the receipt of free passes:

Public employees are already compensated for the performance of their duties. To request or accept any item of more than nominal value — and in most cases these tickets are clearly of more than nominal value — from private entities which have been, are, or may be subject to the public official's responsibilities and duties, is to use one's public position to secure an unwarranted privilege and, in addition, necessarily creates the impression that the private entity may be improperly influencing or unduly enjoying the favor of the public official in the performance of their official duties. Such a practice undermines the public's confidence in the credibility and impartiality of the governmental process.

Compare 57 Fed. Reg. 153, §2635.202 (federal employees prohibited from accepting gifts of less than \$50 from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain).